



STATE OF INDIANA

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August 18, 2011

Mike Lawrence
104 Coax Lane
Lawrenceburg, Indiana 47025
Richard@rbutlerlaw.com

Re: *Informal Inquiry 11-INF-44; City of Lawrenceburg*

Dear Mr. Lawrence:

This is in response to your informal inquiry regarding the City of Lawrenceburg ("City"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

You provide that on August 11, 2011, you appeared in the office of the City's Clerk-Treasurer and requested in writing a variety of public records, including agreements, legal and engineering invoices, written correspondence, contracts, notices, and various studies. You specifically asked for a contract that you allege that Mayor informed you two day prior that you could have on the day you submitted your request. Thereafter, you have since made an identical written records request of the Mayor, Councilman, and City Attorney. As of August 15, 2011, you have yet to receive a response. You have requested the following:

- (1) All documents or data evidencing what the people of Lawrenceburg will get in exchange for their \$49,000,000 investment in the proposed event center and hotel project at the corner of High and Walnut Streets;
- (2) All agreements between the City or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of the City and Penn National Gaming, Inc. regarding the proposed event center and hotel project at the corner of High and Walnut Streets in the City, whether in draft form or final form and executed;
- (3) All studies regarding the event center and hotel project or a convention center in the City;
- (4) All written communication, whether on paper or electronic form, between the City and any board, commission, department, division, bureau, committee, office, instrumentality, or authority of the City and any employee, agent, or independent contractor working for or on behalf of the City, and Penn National Gaming, Inc., including any employee, agent, or independent contractor working for or on behalf of Penn National Gaming, Inc. pertaining in any way to the

proposed event center and hotel project at the corner of High and Walnut Streets in the City;

- (5) All notices of any meetings, public or executive session, regarding the proposed event center and hotel project at the corner of High and Walnut Streets as well as all minutes of those meetings;
- (6) All agreements between the City or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of the City and any other person or entity, including but not limited to American Structurepoint, Inc. regarding the proposed event center and hotel project at the corner of High and Walnut Streets in the City, whether in draft form or final form and executed;
- (7) All plans for the proposed event center and hotel project at the corner of High and Walnut Streets in the City, whether in draft form or final form.

In response to your informal inquiry, Jackie Stutz, the City's Clerk-Treasurer, provided that you made the records request at the City's Clerk-Treasurers office on August 11, 2011. Ms. Stutz provided that she had every intention of processing and providing the records responsive to your request, as she has done with your prior requests. A large number of the records you requested were not in the Clerk's office, which included executed copies of documents and/or drawings. Ms. Stutz provided that she has spoken with you regarding your most recent request and is preparing a letter informing you of the status of your request and respective timelines of when the records will be provided.

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The City is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the City has orally provided that it intended to respond to your request and is in the process of submitting, or has submitted, a written response providing the timelines for when the records will be provided. In this aspect of your informal inquiry, the City has complied with the guidelines of the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request.

Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Here, you requested a large volume of records, including but not limited to studies, meeting minutes and/or memoranda, public notices, correspondence, agreements, contracts, and data. You filed your request to the City on August 11, 2011. You submitted your informal inquiry with this office on August 15, 2011. I would note that not only does the City have to collect the records in response to your request, the APRA *requires* the City to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a).

Under the circumstances provided, it is my opinion that City has not acted unreasonably. Under the APRA, a public agency shall “regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.” *See* I.C. § 5-14-3-7(a). *See also Opinion of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *see also Opinion of the Public Access Counselor 07-FC-327* (three months was not an unreasonable amount of time to respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests); *see also Opinion of the Public Access Counselor 11-FC-72* (four months was not an unreasonable amount of time to respond to thirteen expansive requests when the City made multiple disclosures of records pursuant to the request during the time period, all while handling a separate request which resulted in the production of over three-thousand pages of documents). You made seven broad requests of the City that will involve the production of various records. As of the date you filed this informal inquiry with this Office, four days had elapsed since the time you made the written request of the City. At the same time the City is responding to your request, it must maintain the regular duties required of the office. As such, I do not believe the City took an unreasonable amount of time to collect, review, and reproduce the records in light of the breadth and extensive nature of your requests.

I would make note that this office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinion of the Public Access Counselor 06-FC-184*

and 08-FC-56. I would suggest to the City that as records become available for disclosure, after having been retrieved and reviewed, that they be provided to you at that time.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: Jackie Stutz, Clerk-Treasurer